United Nations A/HRC/32/22

General Assembly

Distr.: General
15 April 2016

Original: English

Human Rights Council
Thirty-second session
Agenda items 2 and 3
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Best practices to counter the negative impact of corruption on the enjoyment of all human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted in response to Human Rights Council resolution 29/11, in which the Council requested the United Nations High Commissioner for Human Rights to prepare a compilation of best practices to counter the negative impact of corruption on the enjoyment of all human rights developed by States, national human rights institutions, national anti-corruption authorities, civil society and academia, for consideration by the Council at its thirty-second session.

GE.16-06200(E)

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I. Introduction

1. In its resolution 29/11, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare a compilation of best practices of efforts to counter the negative impact of corruption on the enjoyment of all human rights developed by States, national human rights institutions, national anti-corruption authorities, civil society and academia, with a view to submitting it to the Council at its thirty-second session.

2. Accordingly, on 24 August 2015, the Office of the United Nations High Commissioner for Human Rights (OHCHR) wrote to all permanent missions to the United Nations Office at Geneva, national human rights institutions, civil society organizations and academic institutions to solicit input for the preparation of the present report, including input from national anti-corruption authorities. The correspondence was complemented by a questionnaire,[1] elaborated jointly with the United Nations Office on Drugs and Crime with a view to guiding and structuring contributions.

3. As at 21 March 2016, OHCHR had received responses from the following States: Argentina, Austria, Bahrain, Bolivia (Plurinational State of), Colombia, Cuba, Estonia, Georgia, Greece, Hungary, Ireland, Malta, Mauritius, Montenegro, Oman, Paraguay, Peru, Romania, Russian Federation, Saudi Arabia, Switzerland, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan and Ukraine. The following national institutions for the promotion and protection of human rights submitted contributions: Danish Institute for Human Rights, National Human Rights Commission of Mexico, Office of the Commissioner for Fundamental Rights of Hungary, Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Office of the Ombudsman of Peru, Office of the Parliamentary Ombudsman of Finland and South African Human Rights Commission. The following civil society organizations submitted contributions: Al Khair Society for Relief and Charity Work (Libya), Asabe Shehu Yar' Adua (Nigeria), Brazilian Association of Women in Defence of Children and Adolescents (Brazil), Center for Grassroot Development and Crime Prevention (Nigeria), International Police Executive Symposium (United States of America), National Association for the Fight against Corruption (Algeria), New Line Social Organization (Afghanistan) and Niger Delta Budget Monitoring Group (Nigeria). The Washington and Lee University School of Law (United States of America) also submitted a contribution.

II. Contributions received from States Members of the United Nations

Argentina

4. The Government of Argentina emphasized that corruption had a negative impact on the enjoyment of human rights. It was therefore necessary to combat corruption as effectively as possible.

5. The Government described legislative amendments it had adopted in implementation of anti-corruption instruments, namely the Inter-American Convention against Corruption, the United Nations Convention against Corruption and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development, and in pursuance of the policy on crime. The amendments aimed at mitigating the negative effects of corruption for

[1] Available from www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/BestPractices.aspx.

society, with a resulting positive impact on the effective enjoyment and better protection of human rights of the population.

6. Measures undertaken included the adoption of a law on ethics in the exercise of the public function; instructions to strengthen the effectiveness of criminal investigations and procedures, including the freezing, seizure and confiscation of proceeds of corruption; and institutional measures to strengthen capacity and cooperation in specific areas such as corruption in the security forces, asset recovery, economic investigations, financial analysis and administrative investigations.

Austria

7. The Government of Austria underlined the importance of specialized knowledge and competence of judges and prosecutors in commercial and business law for effectively combating corruption. Tailored training courses were offered to judges and prosecutors in this regard. Human rights were also part of the judicial training.

8. With regard to the protection of human rights while combating corruption, the Government drew attention to the regulation of forfeiture of assets acquired for or through the commission of an offence, notably to the grounds for exclusion from forfeiture with regard to third persons and with regard to the person concerned if the objective could be achieved by less intrusive means.

9. It listed a number of human rights guarantees that applied in criminal prosecution of corruption cases, including the principles of objectivity and truth seeking; legality and proportionality; the right to a fair hearing; the need for expeditiousness; victim participation; and the right to a public hearing.

10. With regard to the protection of victims, the Government referred to the right of victims not to testify and to give evidence anonymously. It also shared information on its leniency programme and on an Internet-based anonymous system for reporting suspicions of corruption.

11. Austria's national anti-corruption authority shared information on its efforts to protect human rights in cases of reporting suspicions of corruption, cooperation with the competent authorities and prevention of corruption. It noted that human rights violations resulting from corruption-related offences could lead not only to criminal proceedings, but could also be brought before the Constitutional Court. A human rights perspective on corruption focused on the victim. Victims' access to court in corruption cases, including alleged human rights violations resulting from corruption, could be a powerful tool in preventing corruption.

12. Several national human rights mechanisms played an indirect role in combating corruption in Austria. The Austrian Ombudsman Board, for example, could receive complaints of alleged human rights violations. Alleged human rights violations caused by corruption could also be raised with the national prevention mechanism.

13. As part of its efforts to prevent corruption, the national anti-corruption authority provided training and education, including information on the negative impact of corruption on the enjoyment of human rights. The authority maintained contact and exchanged information on the prevention of corruption and human rights with national human rights institutions and civil society organizations. Austria was developing a network of integrity officers to promote ethical, human rights-compliant behaviour in the public administration.

14. Civil servants who reported in good faith well-founded suspicions of a criminal offence were legally protected against discrimination by their employer. A reporting office treated allegations of corruption and abuse of authority confidentially; reporting persons

could set up a mailbox on a whistle-blower website and exchange information with investigators while remaining anonymous.

Bahrain

15. The Government of Bahrain underlined that one of the reasons for criminalizing bribery in the public and private sectors was the negative impact of bribery on the enjoyment of human rights and the violation of the principle of equal opportunity. It shared information on constitutional and legal guarantees to protect the human rights of suspects and of victims in anti-corruption criminal procedures.

16. Bahrain had no memorandum of understanding or other formal arrangement on coordination and cooperation between the national anti-corruption agency and the national human rights institution. All entities worked as one organization and coordination existed at all levels; there was therefore no need for such a memorandum.

17. The Government also shared information on its regulatory framework for asset declaration and on the protection of victims and witnesses, which could include change of place of residence, change of identity and a prohibition or restriction on providing information relating to the identity and residence of the persons requiring protection. Bahrain relied on audio and visual technology to register testimonies for use in criminal proceedings for the protection of victims and witnesses.

Bolivia (Plurinational State of)

18. The Government of the Plurinational State of Bolivia stressed that corruption had a negative impact on State property and diminished the resources available for public services. It thus constituted a structural obstacle to the enjoyment and realization of human rights. The fight against corruption could have positive effects on the realization of human rights, and the promotion of human rights could prevent corruption. Moreover, the fight against corruption could be fully effective only through a human rights approach.

19. The Government underlined the importance of the principles of public disclosure and transparency in public administration. Access to information was particularly important to ensure social control of public spending and management.

20. The national policy to promote transparency and combat corruption built upon two fundamental principles, human rights and social dialogue. It sought to strengthen citizens' participation, transparency in public management and the right of access to information. Access to information, social control, public ethics and public accountability were also constitutional principles.

21. The Government shared information on the protection of witnesses and reporting persons, the establishment of "transparency units" in each ministry, public outreach and education activities, and international cooperation.

Colombia

22. The Government of Colombia highlighted the convergence of the principles underpinning good governance, anti-corruption and the realization of human rights. One important element in the fight against corruption was access to information and social control, such as public hearings to ensure accountability of the public administration. The statutory law on transparency and access to information regulated access to public information, the procedures for exercising the right and the exceptions. The Government also drew attention to the importance of e-government or government online, which contributed to making the State more efficient, transparent and participatory. Another initiative was the creation of a transparency and anti-corruption observatory, which aimed

at improving transparency in public management and included citizen participation. The observatory had developed indicators for measuring good governance, including anti-corruption measures.

Cuba

23. The Government of Cuba underlined the importance of the United Nations Convention against Corruption, the Conference of the States Parties, the review mechanism and the intergovernmental working groups for the prevention and suppression of corruption. Cuba undertook numerous education and awareness-raising activities for all actors of society on the importance of combating corruption, which also contributed to the realization and enjoyment of human rights. The Government also drew attention to the importance of civil society organizations in the review of the implementation of the Convention.

24. Global structural causes made it impossible to eradicate corruption at the national level alone. Increased cooperation from developed countries was therefore necessary to ensure the effective implementation of the Convention, in particular the return of assets to developing countries, which would contribute to sustainable development and the realization of the rights of the peoples in those countries.

Estonia

25. Estonia has integrated a human rights perspective into the preventive measures of its anti-corruption strategy. The Government referred to corruption in the heath sector, which could lead to a violation of the right to health. Consequently, the anti-corruption strategy provided for increasing transparency in the health-care sector as a preventive measure. More generally, however, the Government was of the view that not only preventive but also all anti-corruption measures indirectly addressed the negative impact of corruption on the enjoyment of human rights; therefore, all anti-corruption measures and activities implicitly incorporated human rights considerations.

26. In Estonia, the only corruption cases where human rights played a determining role were criminal proceedings where human rights violations were alleged, such as in the context of surveillance activities.

27. The Government described recent amendments to the Penal Code with regard to some corruption offences to make regulation more efficient and clear. Bribery of public officials and in the private sector became two separate offences and the distinction between "gratuity" and "bribe" was removed.

28. Anonymity was granted to reporting persons to ensure their protection. The Government had set up a special e-mail address and hotline for reporting.

29. Evidence gathered through surveillance activities was inadmissible in court if the process violated the *ultima ratio* principle. Surveillance activities were permitted only on the basis of the Code of Criminal Procedure if it was impossible to collect data otherwise or in time, or if the collection was especially complicated or damaged the interests of the criminal proceedings.

30. The confiscation of proceeds of corruption was possible only in accordance with the provisions of the Penal Code. The Government also shared information on the country's legislative and practical framework for the protection of witnesses, their family members and whistle-blowers.

Georgia

31. The Government of Georgia emphasized that corruption led to human rights violations, making the prevention and suppression of corruption in the public and private sector a priority. The Government's anti-corruption strategy therefore focused on human rights protection. The main objective was to achieve a high level of transparency and accountability, to increase access to public information, to enhance citizen involvement, to strengthen corruption prevention mechanisms and to take advantage of new technologies.

32. Instrumental in that regard was the effective enforcement of human rights, including the right of access to public information, protection of whistle-blowers, political rights and free trial guarantees.

33. In Georgia, the entire system of corruption prevention and suppression was based on the right to participation. The Anti-Corruption Council, for example included representatives from civil society organizations, international organizations, donors and business associations. The anti-corruption strategy itself had been elaborated through a participatory process. Access to information by members of civil society and their participation in the fight against corruption was one of the strategic priorities of the national anti-corruption strategy. Electronic communications services allowed citizens to file requests for public information. Civil society organizations played an important role in measuring progress and evaluating the implementation of the national anti-corruption action plan.

34. As a means to foster transparent, accountable and corruption-free governance systems, Georgia had established an online system for procurement and financial declarations by public officials and for treasury and budget programmes, overhauled the regulation on the funding of political parties and drafted a law regulating access to public information.

35. Another important element of the anti-corruption strategy was the protection of whistle-blowers. That entailed the possibility of anonymous and confidential reporting and protection from retaliation, intimidation, oppression, coercion, humiliation, moral or material damage, use or threat of violence, discrimination or any other illegal act.

36. The right to a fair trial was one of the bases for creating a corruption-free environment. Georgia had adopted several measures to ensure the independence of the judiciary.

Greece

37. The Government of Greece reported that its anti-corruption strategy was indirectly and implicitly based on human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability were essential for a successful anti-corruption strategy. Moreover, the strategy included preventive measures to a great extent, which prevented at the same time the negative impact of corruption on the enjoyment of human rights.

38. The Government observed that there was a strong connection between anti-corruption principles (participation, transparency, access to information, accountability) and the scope of human rights (freedom of expression and of the media, access to information, non-discrimination). Human rights and anti-corruption efforts were mutually reinforced by promoting the necessary elements of good governance, civil and political rights, transparency and accountability.

39. With that in mind, Greece undertook numerous institutional, legislative, policy and educational measures to combat corruption. They included awareness-raising, education,

access to information, witness and whistle-blower protection, an effective, independent and impartial judiciary, transparency of political party financing and coordination mechanisms.

Hungary

40. The Government of Hungary pointed out that the negative impact of corruption on the enjoyment of human rights posed complex problems. Besides numerous efforts to suppress corruption and to recover the proceeds of corruption, the Government described a number of examples where human rights considerations were particularly relevant, including legal guarantees in the context of special investigative techniques and in the context of confiscation procedures. It also highlighted the importance of judicial integrity and of an effective witness protection programme, which included not only witnesses but also victims, and their representatives, experts, interpreters and family members.

41. The Office of the Commissioner for Human Rights operates an electronic system for secure reporting of suspicions of corruption. During the inspection of places of detention and prisons, special care was taken to identify possible illicit relationships between prisoners and prison personnel and to corruption in connection with alleged ill-treatment of persons deprived of their liberty.

Ireland

42. The Government of Ireland drew attention to the negative direct and indirect impact of corruption on the enjoyment of human rights. In order to better combat corruption while at the same time safeguarding human rights, Ireland sought to provide greater clarity with regard to some corruption offences but also to ensure that penalties were proportionate to the damage of corruption to society.

43. The Government shared information on its whistle-blower protection system, which extended beyond its borders. Whistle-blowers abroad could report suspected corruption offences to diplomatic and consular officers or members of law enforcement of the State concerned.

44. While the Irish national human rights institution was not specifically mandated to deal with corruption, its mandate to promote and protect human rights encompassed corruption where it affected human rights. An example of an activity in that regard was the observations of the institution on draft whistle-blower legislation.

45. The Government was of the view that national human rights institutions and regional networks of national human rights institutions were well placed to assess the implications of corruption on human rights, the rule of law, democracy and economic freedom and to work together with national Governments for improved governance and improved functioning of public institutions and the market.

Malta

46. The Government of Malta stressed that preventive measures were among the most effective means of countering corruption and avoiding its negative impact on the enjoyment of human rights. Malta called for a stronger focus on the rights of victims of corruption and on States' responsibility to combat corruption in order to meet their obligations to promote and protect human rights.

47. Reforms aiming at greater transparency were therefore important for combating corruption. Malta had adopted several legislative and institutional steps in that regard, including a code of ethics, a freedom of information act and whistle-blower protection.

48. The Government also reported on challenges that required further action, such as the lack of a monitoring mechanism to ensure compliance with the code of ethics, to verify

asset declarations and to regulate lobbying. It highlighted the importance of transparency in making judicial appointments and decision-making in environmental planning.

49. Malta shared its positive experience with a reform to address vulnerability to corruption in environmental planning and the granting of development permits. A recent legislative act contained provisions on disclosure of conflicts of interests of staff members and consultants of the Malta Environment and Planning Authority. Failure to disclose an interest could result in removal from office or termination of contract. As an additional safeguard, relevant proceedings and hearings were held in public. Moreover, the Ombudsman Act was amended to allow the Ombudsman to appoint commissioners for administrative investigations; that led to the appointment of a Commissioner for Environment and Planning to investigate complaints related to the Malta Environment and Planning Authority. The Commissioner has the power to require the production of documents, summon witnesses and report to Parliament. Since the reform, the number of complaints had decreased.

Mauritius

50. The Government of Mauritius expressed the view that corruption could violate human rights, had negative impacts on the enjoyment of human rights, increased inequality and caused poverty. Corruption created discrimination and inequality of opportunity, especially with respect to employment, promotion, access to services and opportunities. Those who were disadvantaged economically and politically suffered disproportionately from the consequences of corruption because they were particularly dependent on public goods.

51. The Government expressed the belief that the fight against corruption could be complemented by respect for human rights standards, methods and mechanisms, as both pursued the same objective: a society where justice, fairness, honesty, equality and integrity prevailed for the benefit of the population. Prevention and suppression of corruption ultimately promoted human rights and asset recovery was a means to provide redress.

52. The national human rights institution transmitted allegations of corruption to the national anti-corruption agency. The Government drew attention to the principles common to achieving human rights and to fighting corruption. A common understanding of the problem and of its impact and close collaboration could result in a more effective outcome. Possible joint actions included outreach and education campaigns and research.

53. The Government underlined the importance of upholding the rights of the accused in the investigation and prosecution of suspected cases of corruption as well as during confiscation procedures. It also shared information on its legislation for the protection of witnesses and informers. Finally, it expressed the view that indicators might help to measure the negative impact of corruption on human rights.

Montenegro

54. The Government of Montenegro reported that under its Law on Prevention of Corruption the national anti-corruption agency had the authority to assign proceedings to other competent authorities, which allowed for cooperation with the national human rights institution. The anti-corruption agency was an independent body that carried out its functions free from any undue influence.

55. The Government shared information on the legal requirements for the investigation and prosecution of corruption as well as for the recovery of stolen assets.

56. The Law on Prevention of Corruption strengthened the protection of whistle-blowers. The definition of whistle-blower covered public and private sector employees.

Public interest was broadly defined and protection was guaranteed for a broad spectrum of reports of irregularities and unethical behaviour. There was a clear procedure to be followed to report suspicions of corruption. Montenegro established an external independent authority which guaranteed comprehensive protection of whistle-blowers, complementary to the judicial protections of whistle-blowers against discrimination and harassment at work.

Oman

57. The Government of Oman provided information on its criminal law and criminal procedure law on combating corruption while respecting human rights. The State's anti-corruption agency was legally, financially and administratively independent.

Paraguay

58. The Government of Paraguay highlighted the importance of transparency, integrity, good governance and prevention of corruption in public policies. It established a national anti-corruption agency with the mandate to coordinate, implement and monitor public policies in the areas of transparency and integrity.

59. The Government reported on the State's participation in international and regional anti-corruption conventions and its cooperation with the relevant review mechanisms. Several inter-institutional cooperation agreements had been concluded to coordinate the implementation of policies of transparency, integrity and anti-corruption. The Government also reported on the National Plan for the Prevention of Corruption and the creation of transparency and anti-corruption units. A series of lectures and seminars aimed at strengthening public ethics, transparency and integrity and anti-corruption had been organized.

60. The Government carried out an institutional diagnostic of transparency, anti-corruption and good practices in public institutions and adopted a law on free access to public information and governmental transparency.

Peru

61. The Government of Peru highlighted the importance of open government, transparency and access to public information as important elements to ensure accountability of public entities and respect for human rights.

62. The State's national human rights action plan aimed, inter alia, at consolidating the mechanisms for access to public information, including by strengthening the system for reporting suspicions of corruption. Similarly, the national plan for education on fundamental rights and responsibilities recognized that the creation of a human rights culture required combating corruption. The Government shared examples of inter-institutional and transnational cooperation and coordination in the area of open government and anti-corruption.

63. It highlighted that corruption affected the society in general, which could be seen from perception indices. The rate of identification and prosecution of corruption cases indirectly determined the realization of human rights.

64. Peru included human rights considerations in its self-assessment of implementation of the United Nations Convention against Corruption with regard to extradition. Peru interpreted the relevant provision in conformity with the pertinent national legislation on this subject, which stipulated that its international judicial cooperation should be governed by international treaties ratified by Peru and in the absence thereof by the principle of reciprocity, with due respect for human rights. Consequently, extradition must adhere to

human rights principles, which could be the basis for rejecting a request for extradition, for example in cases of trials in absentia.

65. The Government reported on initiatives that aimed at improving the fight against corruption, integrity and protection against human rights violations, such as the recovery of assets from abroad in the corruption case involving the former head of the intelligence service, Vladimiro Montesinos, and its whistle-blower protection law.

Romania

66. The Government of Romania recalled that corruption led to human rights violations and that fighting corruption safeguarded human rights. It shared information on its efforts to criminalize corruption, including the establishment of a specialized anti-corruption prosecutor's office, and its legal framework for confiscation of the proceeds of corruption.

67. It also shared information on legal provisions for the reduction of or exemption from criminal punishment of cooperating persons.

Russian Federation

68. The Government of the Russian Federation drew attention to the rights of victims of corruption, whether natural or legal persons. Entities and persons who had suffered damage because of an act of corruption had the right to initiate legal proceedings against those responsible in order to obtain compensation. In that context, the Government highlighted the importance of seizing, freezing and confiscating proceeds of corruption.

69. With a view to ensuring transparency in the fight against corruption, the Russian Federation sought to strengthen social control mechanisms, including those concerning business representatives. The Government provided statistical information on anti-corruption cases and some examples of high-level cases and shared information on the protection of reporting persons.

Saudi Arabia

70. The Government of Saudi Arabia reported that its national anti-corruption agency and national human rights institution worked side by side to achieve equality of all members of society, by preventing preferential treatment and ensuring accountability. Among the tasks of the anti-corruption agency was deciding on corruption cases, including compensation for those whose rights and interests had been infringed by corruption.

71. The anti-corruption agency paid great attention to the protection of victims, witnesses, whistle-blowers and anti-corruption activists, primarily by ensuring confidentiality.

72. The Government highlighted the importance of an independent judiciary, freedom of expression, accountability, integrity and civil society participation in combating corruption.

73. It drew attention to the obligation under United Nations Convention against Corruption to promote the reintegration into society of persons convicted of offences established in accordance with the Convention and to its national legislation in that regard.

Switzerland

74. The Government of Switzerland highlighted the importance of a human rights-based approach to the existing anti-corruption framework. This complementary perspective was intended to strengthen the systemic responsibility of the State and the position of the victim.

75. References to human rights in its self-assessment of implementation of the United Nations Convention on Corruption related to provisions of Swiss law, which prohibited

extradition or other forms of international cooperation in corruption cases where foreign proceedings did not fulfil the standard set by the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights) and the International Covenant on Civil and Political Rights.

Trinidad and Tobago

76. The Government of Trinidad and Tobago reported that it had established an Integrity Commission to prevent corruption of persons in public life. The Commission was empowered to receive complaints alleging that a person in public life or any person exercising a public function had acted in contravention of the Integrity in Public Life Act, or had a conflict of interests in relation to the Register of Interests, or was committing or had committed an offence under the Prevention of Corruption Act.

77. As an example of the incorporation of human rights considerations in its self-assessment of implementation of the United Nations Convention on Corruption, the Government referred to the establishment of the Regional Justice Protection Programme, which provided for the protection of witnesses, experts and victims on a regional basis, facilitating international cooperation.

78. Another example was the Police Complaints Authority, an independent body responsible for investigating, inter alia, police corruption. As part of its mandate, it engaged in outreach programmes designed to educate and sensitize the public. With a view to securing the independence of the Authority, its director and deputy director were appointed by the President on the joint advice of the Prime Minister and the Leader of the Opposition. The Authority was responsible only to the Parliament.

Tunisia

79. The Government of Tunisia reported that the Constitution of Tunisia linked the eradication of corruption with human rights principles. The implementation of the Constitution implied that combating corruption was undertaken to guarantee and protect the enjoyment of human rights, the principles of equality, equity and non-discrimination and economic, social and cultural rights. Respect for freedom of expression, including the right of access to information, contributed to the fight against corruption, given the important role of the media and of civil society in uncovering corruption and in fostering a culture of integrity.

80. Human rights and human rights principles were thus an important element in the fight against corruption. They were recognized in codes of conduct and formed the basis for the approach and implementation of anti-corruption policies and programmes.

81. The national human rights institution of Tunisia was empowered to receive complaints of human rights violations, including those related to corruption. It received in particular complaints about the treatment in prisons and detention centres. The institution examined the complaints in coordination with the concerned entities with a view to providing redress to the victims.

82. Tunisia recognized the need for interaction and cooperation between the anti-corruption agency and the human rights institution in collecting data and promoting public awareness of the negative impact of corruption. At present, however, there were no specific mechanisms or focal points for facilitating cooperation.

83. The Government drew attention to the Open Government Partnership initiative and the initiative to create an Arab corruption court. It underlined the importance of an independent judiciary as a central element in the fight against corruption and for the protection of human rights and the rule of law.

84. The Government underlined the importance of an independent anti-corruption agency, with the power to investigate and receive complaints. It was important for the president and members of the agency to enjoy immunity in the exercise of their functions.

Turkey

85. The Government of Turkey drew attention to the principle of transparency as a main element in the fight against corruption. It shared information on the reform of its procurement system to ensure that bidding procedures guaranteed competition, transparency and equal treatment, increased savings and efficiency and prevented irregularities. A public procurement institution considered complaints regarding the bidding procedures and played a crucial role in safeguarding the constitutional principles of the right to a remedy and equality before the law. Another measure concerned the regulation of asset declarations and the prohibition on receiving gifts.

86. In Turkey, the right to information was recognized as a constitutional right. A communications centre had been established as a further step to ensure transparency and integrity. The Government also shared information on the protection of whistle-blowers.

87. The Government highlighted the role of the ombudsman institution in the promotion and protection of human rights as well as in the fight against corruption, in particular the complaints procedure. Another important institution was the ethics board of public servants, which conducted investigations into misconduct and reviewed asset declarations.

Turkmenistan

88. The Government of Turkmenistan emphasized that corruption was a major obstacle to the realization of human rights and disregarded basic human rights principles, namely transparency, accountability, non-discrimination and participation. Compliance with those principles was the most effective means to combat corruption.

89. The main principles underpinning the efforts to combat corruption in Turkmenistan were recognition and enforcement of the rights and freedoms of citizens, in particular to be protected from corruption; protection of the rights and interests of legal entities and individuals; equality before the law; the protection of persons assisting in the fight against corruption, transparency and openness of public authorities; control by the society and the State; and the use of integrated political, legal, advocacy and socioeconomic measures.

90. The Government drew attention to the importance of fostering a climate of intolerance of corruption. It also drew attention to the qualification requirements for citizens applying for public service positions and to the grounds for dismissal and promotion.

91. It highlighted the importance of victim and witness protection as well as the importance of freedom of the media and the special role of the prosecutor.

Ukraine

92. The Government of Ukraine highlighted the transnational character of corruption and the consequent need for international cooperation. It also highlighted the importance of restoring the rights of citizens who were victims of corruption.

93. The Government drew particular attention to open and transparent competitive recruitment to the national anti-corruption bodies, their independent status and the necessary safeguards.

III. Contributions received from national human rights institutions

Danish Institute for Human Rights

94. The Danish Institute for Human Rights drew attention to the importance of whistle-blower protection, in both the public and the private sector. Effective protection, including the possibility for anonymous reporting without fear of repercussions or reprisals, encouraged employees to exercise their right to freedom of expression and report suspicious conduct. The Institute expressed the view that in Denmark safeguards against corruption were firmly grounded in integrity. The Institute also drew attention to the importance of protecting the rights of the persons accused of corruption.

National Human Rights Commission of Mexico

95. The National Human Rights Commission of Mexico shared information on its internal control and monitoring system and on its declarations of assets and interests.

96. The Commission also drew attention to the National Human Rights Programme, which required the establishment of mechanisms for accountability and access to information. The programme additionally required ensuring the institutionalization of a human rights approach in the programmes of the Federal Public Administration, including the programme to fight corruption. The Commission shared detailed information on the anti-corruption legal framework, including with regard to access to information, transparency, declaration of assets and interests, codes of conduct and the institutional set-up for coordination.

Office of the Commissioner for Fundamental Rights of Hungary

97. The Office of the Commissioner for Fundamental Rights of Hungary shared information on its power to receive individual complaints and notifications of general interest, the latter defined as a notification that drew attention to circumstances whose remedy or termination was necessary in the interest of the community or society as a whole. Whistle-blowers could submit such notifications via a protected electronic system and request that their personal data be accessible only to the Office. The Commissioner could inquire into the handling of notifications by public bodies upon request from individuals or on its own motion. The Office had the power to request documents and information, hold hearings and in situ examinations and address recommendations to the body that was the subject of the inquiry or its supervisory organ.

98. The Office participated in the anti-corruption and integrity working group. In relation to the operation of the whistle-blower protection programme, the Office had concluded a cooperation agreement with the National Protection Service under the Ministry of the Interior. The Office also participated in education, training and awareness-raising activities on the prevention of corruption and integrity.

Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

99. The Ombudsman's Office of Azerbaijan reported that it had a mandate to investigate corruption as a cause of human rights violations, in cooperation with relevant State authorities, with a view to preventing and suppressing corruption and to ensure redress to victims of corruption. The Office carried out awareness-raising activities to draw attention to the importance of preventing corruption as a threat to human rights.

100. The Office had the power to receive individual complaints. In the event of a complaint of corruption, the Office would inform the competent public institution, such as the Office of the Prosecutor General, and request it to take the necessary action. The Ombudsman had made several requests to the Judicial-Legal Council in cases of abuse of power by judges.

101. The Office submitted observations to the parliament on the draft Code of Conduct of Civil Servants and the Law on Preventing Conflict of Interests of State Officials on their compatibility with human rights.

102. The Office appointed a special adviser on corruption in order to strengthen its cooperation with anti-corruption agencies. During visits to places of detention, the Office informed detainees about the anti-corruption legal framework and the competence of the Ombudsman.

103. A representative of the Office participated as a member of the Commission on Anti-Corruption in the elaboration of anti-corruption strategies and programmes. The Office also cooperated with the Council of Europe Group of States against Corruption and the national chapter of Transparency International.

Office of the Ombudsman of Peru

104. The Office of the Ombudsman of Peru analysed sectors at particular risk of corruption and published several reports in that regard. The report on education showed that corruption affected the core content of the right to education and its essential features (availability, accessibility, acceptability and adaptability). The report identified three conditions that enabled acts of corruption, namely inefficient mechanisms of control and sanction; weak mechanisms of transparency and limited access to information; and weak citizen control. The areas most frequently affected by corruption and the main risk factors included impunity, illicit charges and fees, selling of grades in academic institutions, nepotism, irregularities in administrative procedures, irregularities in the appointment and movement of personnel, lack of transparency and irregularities in the management of educational material.

105. The report on social programmes evaluated in particular a programme under which direct financial support was provided to the poor. Acts of corruption occurred during the different phases of the programme. Contributing factors included lack of effective control mechanisms.

106. Another report contained a chapter on corruption in the penitentiary system. The report concluded that corruption constituted a factor that affected not only the institution but also citizens' security and the principle of authority.

107. Finally, the Office published a report analysing charges of graft and collusion. The study identified a range of challenges in investigating corruption, including the need for prosecutors with specialized capacity and adequate budgets.

Office of the Parliamentary Ombudsman of Finland

108. The Office of the Parliamentary Ombudsman of Finland reported that it had the power to investigate complaints lodged by individual persons, associations, enterprises or litigating lawyers or to instigate proceedings on its own motion. The Office had wide-ranging powers to obtain information, to order that the police carry out a preliminary investigation and to order criminal charges to be brought against public officials.

109. The Office received only a very small number of individual complaints of suspected or alleged corruption. It included in its submission four cases, all related to the acceptance of gifts and hospitality by public officials.

South African Human Rights Commission

110. The South African Human Rights Commission reported that it considered the right of access to information to be a key element in the fight against corruption. The Commission was mandated to monitor compliance with the Promotion of Access to Information Act and established a dedicated unit for that purpose. The unit handled complaints regarding access to information, which involved issues of whistle-blowing and corruption. The Commission investigated allegations and took steps to remedy human rights violations, including by approaching the courts and preparing reports of adverse findings.

111. The Commission also engaged with the African Commission on Human and Peoples' Rights in the drafting of the Model Law of Access to Information for Africa.

112. The Commission highlighted the importance of the principles of open contracting in the tender and award of contracts by Government and private companies, as corruption often occurred as a result of the maladministration of contracts. That was particularly important in instances where private companies were contracted to fulfil basic services and socioeconomic rights.

113. A complaint to the Commission concerning corruption could be referred to another body that was more suitable for dealing with the issue, such as the Office of the Public Prosecutor, the Special Investigation Unit or the Asset Forfeiture Unit. In some instances, the Commission worked together with another body in the investigation of a complaint where there was a clear overlap with human rights concerns.

114. The Commission drew attention to a landmark judgment of the Constitutional Court in which the Court clearly articulated the relationship between corruption and the non-realization of human rights. The Court observed that corruption undermined the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. It concluded that courts dealing with corruption cases must send out an unequivocal message that corruption would not be tolerated and that punishment will be appropriately severe.

115. The Commission was also mandated to monitor the implementation of the National Development Plan: Vision 2030, inter alia, with a view to assessing the extent to which the anti-corruption strategies employed in the plan could serve to promote human rights.

116. The Commission also provided comments on the bill to amend the Protected Disclosures Act, in the context of ensuring compliance with the rights to freedom of expression, access to information, freedom and security of the person, fair labour practices and just administrative action.

IV. Contributions received from civil society organizations and academia

Al Khair Society for Relief and Charity Work

117. The Al Khair Society for Relief and Charity Work highlighted the importance of training to improve the technical skills of the relevant authorities involved in the fight against corruption. In this regard, it drew attention to cooperation with specialized institutions such as the Basel Institute on Governance and to the principles of transparency and accountability, the importance of adequate salaries in the public service and the importance of disseminating information on corruption cases.

Asabe Shehu Yar' Adua

118. Asabe Shehu Yar' Adua stressed that the impact of corruption on human rights was not confined within national borders. In its view, corruption weakened the accountability structures responsible for protecting human rights. The organization observed that corruption had a negative impact in particular on the disadvantaged segments of the population. It suggested that putting in place procedures for claiming human rights was an effective mechanism for combating corruption as human rights principles and institutions were essential components of successful and sustainable anti-corruption strategies. It also drew attention to the possibility of using regional and international human rights monitoring mechanisms to combat corruption. It suggested establishing joint committees of anti-corruption agencies and national human rights institutions.

Brazilian Association of Women in Defence of Children and Adolescents

119. The Brazilian Association of Women in Defence of Children and Adolescents highlighted the importance of transparency in fiscal management, in particular the legal obligation to disclose public spending and all financial transactions, which it considered to be the main tool for combating corruption. It drew attention to the Clean Record Law, which disqualified politicians who were convicted of violations of electoral statutes or crimes involving the use of public funds, including corruption, from running for office for at least eight years. It also drew attention to the corruption-specific recommendations contained in International Organization for Standardization (ISO) 26000 on social responsibility. With regard to the protection of victims and witnesses, the organization expressed concern over lack of commitment and budgets for the implementation of the various programmes.

Center for Grassroot Development and Crime Prevention

120. The Center for Grassroot Development and Crime Prevention drew attention to the negative impact of corruption on the enjoyment of human rights, in particular the right to health. The organization recommended, inter alia, imposing severe penalties for crimes of corruption, enforcing laws that aimed to prevent and suppress corruption, strengthening witness protection and providing incentives to change attitudes and behaviour with regard to corruption.

International Police Executive Symposium

121. The International Police Executive Symposium suggested distinguishing between petty and grand corruption. The former tended to be pervasive, involving small amounts of money, and was best tackled by addressing the economic conditions and culture of work of public servants. The latter involved large amounts, often saved in bank accounts or invested in developed countries, and was best tackled by preventing the corruptor from enjoying the benefits. With regard to police corruption, the organization recommended that efforts be made to professionalize police forces.

National Association for the Fight against Corruption

122. The National Association for the Fight against Corruption drew attention to the direct and indirect negative consequences of corruption on the human rights of individuals, groups and society.

123. The organization supported complementing traditional anti-corruption efforts, which focused on suppression and to a lesser degree on prevention and reparation, by a human rights-based approach, which was victim-centred.

124. The organization drew attention to the similarities of anti-corruption principles (participation, transparency, access to information, accountability) and human, primarily civil and political, rights (freedom of expression and the media, including the right of access to information, freedom of assembly and association, independence of the judiciary, equality and non-discrimination and the right to strike).

125. The organization highlighted the importance for national human rights institutions and anti-corruption bodies to be independent and have broad powers. It also highlighted the importance of civil society space in the fight against corruption, as well as the role of supreme audit institutions.

New Line Social Organization

126. The New Line Social Organization highlighted the negative impact of corruption on development and human rights. It called for human rights education and awareness-raising, independent anti-corruption bodies, development, creation of employment opportunities, security and democracy as means to combat corruption.

Niger Delta Budget Monitoring Group

127. The Niger Delta Budget Monitoring Group highlighted the importance of an independent judiciary and of law enforcement for the protection against corruption. The organization recommended the adoption of a memorandum of understanding between the National Human Rights Commission of Nigeria and the national anti-corruption bodies. It also recommended elaborating a whistle-blower protection law.

Washington and Lee University School of Law

128. The Washington and Lee University School of Law highlighted the importance of human rights and anti-corruption education, which sensitized students to the effects of corruption, prepared them to enter the workforce with an understanding of ways and means to identify and combat corruption and could be an effective tool to combat corruption. The law school was implementing a joint anti-corruption and human rights programme with the Law School of the University of Liberia to share students' knowledge of anti-corruption and human rights with the community and local organizations.128.

V. Analysis and conclusions

129. Respondents shared the view that corruption has a negative impact on the enjoyment of human rights and can lead to or directly constitute human rights violations. Economically and politically marginalized groups were at particular risk of the adverse effects of corruption. Respondents stressed that corruption undermined the capacity of States to protect and fulfil their human rights obligations, more specifically the obligation to take steps, to the maximum of available resources, with a view to achieving progressively the full realization of economic, social and cultural rights. They further emphasized that corruption could lead to discrimination and violated the principle of equality. Therefore, States were duty bound to combat corruption.

130. Several respondents highlighted the importance of a human rights-based approach to combating corruption. Respondents argued that a human rights-based approach would complement the mainstream, or traditional, anti-corruption efforts, which tended to focus on the perpetrator, individual criminal responsibility and suppression. The human rights-based approach, on the other hand, focused on the victim, on State responsibility and on prevention and redress.

131. **Several respondents drew attention to the correspondence of anti-corruption and human rights principles. Respondents also stressed the instrumental role of human rights for preventing and combating corruption. They drew attention, in particular, to freedom of expression, the right of access to information, freedom of the media, freedom of assembly and association, and protection of victims and witnesses, whistle-blowers, reporting persons, anti-corruption activists, investigative journalists, prosecutors, lawyers and judges. Respondents also emphasized the importance of education, including human rights and anti-corruption education, and training to prevent corruption.**

132. **Respondents underlined the importance of an independent and impartial judiciary.**

133. **Respondents also stressed the importance of safeguarding human rights in efforts to combat corruption. They explicitly mentioned the definition of specific corruption crimes, the crime of illicit enrichment, special investigative techniques, prosecution and judicial proceedings, and the recovery of stolen assets and third-party rights.**

134. **Respondents shared examples of work undertaken by national human rights institutions and their cooperation with anti-corruption authorities. National human rights institutions could play an important role by awareness-raising and educational and training activities, through their complaint handling procedure, through investigations and analysis, and by commenting on draft laws or proposing amendments to existing laws.**

135. **Several respondents highlighted the opportunities provided by information and communications technology to strengthen transparency and accountability, to prevent and detect corruption, to investigate corruption and to protect victims, witnesses and whistle-blowers.**

136. **Respondents recommended using indicators for measuring the negative impact of corruption on the enjoyment of human rights.**

137. **References to human rights in self-assessment of implementation of the United Nations Convention against Corruption concerned the importance of human rights protection in the context of extradition requests.**

138. **Respondents also highlighted the transnational character of corruption and the consequential need for international cooperation to prevent and suppress corruption and to recover illicit assets.**